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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/585,722	06/26/2008	Peter Georg Laitenberg	14673-072 US NATL	7200
79990 7590 05/04/2010				
C. R. Bard, Inc. Bard Peripheral Vascular, Inc. 1415 W. 3rd Street P.O. Box 1740 Tempe, AZ 85280-1740				
EXAMINER				
WOZNICKI, JACQUELINE				
ART UNIT		PAPER NUMBER		
3774				
MAIL DATE		DELIVERY MODE		
05/04/2010		PAPER		

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

**Advisory Action
Before the Filing of an Appeal Brief**

Application No. 10/585,722	Applicant(s) LAITENBERGER ET AL.
Examiner JACQUELINE WOZNICKI	Art Unit 3774

--The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

THE REPLY FILED 04/22/10 FAILS TO PLACE THIS APPLICATION IN CONDITION FOR ALLOWANCE.

1. ☒ The reply was filed after a final rejection, but prior to or on the same day as filing a Notice of Appeal. To avoid abandonment of this application, applicant must timely file one of the following replies: (1) an amendment, affidavit, or other evidence, which places the application in condition for allowance; (2) a Notice of Appeal (with appeal fee) in compliance with 37 CFR 41.31; or (3) a Request for Continued Examination (RCE) in compliance with 37 CFR 1.114. The reply must be filed within one of the following time periods:

- a) ☐ The period for reply expires _____ months from the mailing date of the final rejection.
b) ☒ The period for reply expires on: (1) the mailing date of this Advisory Action, or (2) the date set forth in the final rejection, whichever is later. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of the final rejection.
Examiner Note: If box 1 is checked, check either box (a) or (b). ONLY CHECK BOX (b) WHEN THE FIRST REPLY WAS FILED WITHIN TWO MONTHS OF THE FINAL REJECTION. See MPEP 706.07(f).

Extensions of time may be obtained under 37 CFR 1.136(a). The date on which the petition under 37 CFR 1.136(a) and the appropriate extension fee have been filed is the date for purposes of determining the period of extension and the corresponding amount of the fee. The appropriate extension fee under 37 CFR 1.17(a) is calculated from: (1) the expiration date of the shortened statutory period for reply originally set in the final Office action; or (2) as set forth in (b) above, if checked. Any reply received by the Office later than three months after the mailing date of the final rejection, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

NOTICE OF APPEAL

2. ☐ The Notice of Appeal was filed on _____. A brief in compliance with 37 CFR 41.37 must be filed within two months of the date of filing the Notice of Appeal (37 CFR 41.37(a)), or any extension thereof (37 CFR 41.37(e)), to avoid dismissal of the appeal. Since a Notice of Appeal has been filed, any reply must be filed within the time period set forth in 37 CFR 41.37(a).

AMENDMENTS

3. ☐ The proposed amendment(s) filed after a final rejection, but prior to the date of filing a brief, will not be entered because
(a) ☐ They raise new issues that would require further consideration and/or search (see NOTE below);
(b) ☐ They raise the issue of new matter (see NOTE below);
(c) ☐ They are not deemed to place the application in better form for appeal by materially reducing or simplifying the issues for appeal; and/or
(d) ☐ They present additional claims without canceling a corresponding number of finally rejected claims.
NOTE: _____. (See 37 CFR 1.116 and 41.33(a)).

4. ☐ The amendments are not in compliance with 37 CFR 1.121. See attached Notice of Non-Compliant Amendment (PTOL-324).
5. ☒ Applicant's reply has overcome the following rejection(s): 35 U.S.C. 112 rejection to claim 8.
6. ☐ Newly proposed or amended claim(s) _____ would be allowable if submitted in a separate, timely filed amendment canceling the non-allowable claim(s).
7. ☒ For purposes of appeal, the proposed amendment(s): a) ☐ will not be entered, or b) ☒ will be entered and an explanation of how the new or amended claims would be rejected is provided below or appended.
The status of the claim(s) is (or will be) as follows:
Claim(s) allowed: _____
Claim(s) objected to: _____
Claim(s) rejected: 1-7 and 9-36
Claim(s) withdrawn from consideration: _____

AFFIDAVIT OR OTHER EVIDENCE

8. ☐ The affidavit or other evidence filed after a final action, but before or on the date of filing a Notice of Appeal will not be entered because applicant failed to provide a showing of good and sufficient reasons why the affidavit or other evidence is necessary and was not earlier presented. See 37 CFR 1.116(e).
9. ☐ The affidavit or other evidence filed after the date of filing a Notice of Appeal, but prior to the date of filing a brief, will not be entered because the affidavit or other evidence failed to overcome all rejections under appeal and/or appellant fails to provide a showing of good and sufficient reasons why it is necessary and was not earlier presented. See 37 CFR 41.33(d)(1).
10. ☐ The affidavit or other evidence is entered. An explanation of the status of the claims after entry is below or attached.

REQUEST FOR RECONSIDERATION/OTHER

11. ☒ The request for reconsideration has been considered but does NOT place the application in condition for allowance because:
See Continuation Sheet.
12. ☐ Note the attached Information Disclosure Statement(s). (PTO/SB/08) Paper No(s). _____
13. ☐ Other: _____.

/DAVID ISABELLA/
Supervisory Patent Examiner, Art Unit 3774

/JACQUELINE WOZNICKI/
Examiner, Art Unit 3774

Continuation of 11, does NOT place the application in condition for allowance because: On page 7, regarding claim 2, Applicant argues that "figure of eight" is grammatically correct and does not believe it should be changed to "figure eight". Examiner respectfully disagrees and maintains the objection with regard to claim 2.

On page 7, regarding claim 35, Applicant argues that the term "string" is clear because of the explanation in the specification. Examiner disagrees, as it is not explained in the claims OR pictured in the drawings, and maintains the objection to claim 35.

On pages 9-10, Applicants argue that the language of claim 4 with regard to "a cancelling remainder of lobes" is clear. Examiner respectfully disagrees and maintains the Final Rejection.

On pages 11-14, with respect to claims 1, 4, and 35, Applicant argues that the Final Rejection refers to "closed loops" as being incomplete loops, that would not have any current flowing through due to the location of the discontinuities between the loops and that the discontinuities can not be the basis of separation between a first current pathway and a second current pathway, as claimed in claim 1.

Examiner respectfully disagrees and maintains the Final Rejection, and also wishes to point out that if the "closed loops" of the prior art do not have current flowing through them due to the location of the discontinuities, the "closed loops" of Applicant's invention also must not have current flowing through them (Examiner refers to Figure 2, where discontinuities appear to disrupt the cells).

On page 14, regarding claim 35, Applicant argues that it is not inherent that all tubular implants inherently have a counterpart lobe as claimed, but that it is possible and/or probable. Applicant uses evidence of a "periphery of a string of equal area lobes within a closed loop". Examiner respectfully disagrees and maintains the final rejection. Also, Examiner wishes to reiterate that the "string of lobes" is unclear and is not explained in the claims or pictured in the drawings and so can not effectively be used to persuade the Examiner that part of the claimed invention of claim 35 is lacking. As written, the Examiner maintains the final rejection of claim 35.

On page 15, regarding claim 1, Applicant argues that Buckner et al. (WO 03015662 A1 or translation US 20040249220 A1) contains no continuous electrical circuit and so can not describe electrically-conductive closed loops with a first and second current pathway as claimed in claim 1. Examiner respectfully disagrees, and again refers to Figure 2 of Applicant's invention, where it can also be argued that there are no "closed loops" with first and second current pathways.

Examiner maintains the final rejection, however, EXAMINER ENCOURAGES APPLICANT TO SCHEDULE AN INTERVIEW BEFORE FILING FOR AN RCE IN ORDER TO BETTER CLARIFY THE INVENTION and to clarify the differences between the Applicant's invention and the applied prior art..